

Code and is therefore an offence for the purposes A
of section 141.

In all the circumstances of the case, then, we are compelled to dismiss the appeals against conviction.

As regards sentences, it is our view that at the time they were imposed (it is about a year ago) they were proper sentences, and indeed if they erred at all they erred on the side of leniency. Clearly, in the circumstances which then prevailed an episode such as the sort of which we are concerned with here was potentially a very grave threat to the security of this place. Since then, however, circumstances have altered in a number of respects which must be well-known to all, although I do not think it is necessary for us to particularize them in detail. Having regard to these changed circumstances we are of the opinion, bearing in mind that as far as we know these people are all of excellent personal character, that justice will be served and the public interest, which after all must be paramount, will not be affected if we set aside the sentences of imprisonment and order that each of the appellants be discharged on entering into a bond in the sum of \$1,000 for six months to be of good behaviour and to come up for judgment if called upon.

Appeals dismissed.

SEAH SIAK HOW v. PUBLIC PROSECUTOR

[A.C.J. (Wee Chong Jin C.J.) October 7, 1964]

[Singapore — Magistrate's Appeal No. 37 of 1964]

Road Traffic Ordinance, 1961, s. 26(1) — Causing the death of a person by driving a motor car recklessly — Meaning of "reckless" — Charge reduced to one of causing death by negligence.

Negligence — Causing death by "reckless" driving — Reduction of charges to one under Penal Code, s. 304A.

In this case the appellant appealed against his conviction on a charge of causing the death of a person by driving a motor car on the road recklessly, by failing to exercise due care and attention.

Held: (1) to bring home a charge under section 26 of the Road Traffic Ordinance in respect of driving recklessly it must be shown that the driving is such as to amount to rash driving and the driver of the vehicle in question must be heedless of the state of affairs on the road in question;

(2) in this case the evidence was not sufficient to found a conviction for reckless driving under section 26 of the Road Traffic Ordinance and the conviction must be altered to one under section 304A of the Penal Code for causing death by negligence.

Case referred to:—

(1) *R. v. Grunwald & Ors.* [1960] 3 All E.R. 380.

MAGISTRATE'S CRIMINAL APPEAL.

K. C. Chan for the appellant.

Francis T. Seow (Sr. Crown Counsel) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This appeal is against the conviction of the appellant on a charge under section 26(1) of the Road Traffic Ordinance 1961. The appellant was charged with causing the death of Lee Goh Thong by driving motor car No. JA. 3059 on the road recklessly, to wit, by failing to exercise due care and attention. He was found guilty on this charge and sentenced to four (4) months' imprisonment and a disqualification from driving for a period of three (3) years.

Before me it is conceded by counsel for the appellant and rightly so I think that on the evidence before the learned magistrate there was sufficient to found a conviction based on negligence and therefore sufficient to found a conviction on a charge under section 304A of the Penal Code.

It was argued however that there was no evidence to support a conviction for driving recklessly and thereby causing death under section 26 of the Road Traffic Ordinance. The argument as I understand it is based on the contention that to bring home a charge of driving recklessly under this section of the Road Traffic Ordinance there must be shown that the negligence was of such a degree as to amount to the offence of manslaughter in England. "Reckless" according to the *Oxford English Dictionary* means, in respect of action conduct or things "characterised or distinguished by heedless rashness". That definition in its context has been judicially accepted in a criminal case in England in the case of *Rex v. Grunwald & Ors.*,⁽¹⁾ and must in my opinion be the meaning which should be attributed to it under the Road Traffic Ordinance. It follows that to bring home a charge under section 26 in respect of driving recklessly it must be shown that the driving is such as to amount to rash driving and the driver of the vehicle in question must be heedless of the state of affairs on the road at the time in question. That being the degree of proof required, what is the evidence in this case. There were two so to speak eye witnesses and they were two ladies who were passengers in the trishaw ridden by the deceased at the time when it was run into by the appellant's car. Both gave evidence merely to the effect that simultaneously or almost immediately after the trishaw was overtaking a parked vehicle the trishaw was hit by a car from behind. One witness was treated as an outpatient in the hospital and the other lost consciousness but there is no evidence whether or not she was hospitalised. The only other evidence bearing on this matter is that of a police sergeant who arrived at the scene approximately one hour after the accident and his evidence was that he found the road surface was dry and the visibility was good and that when he was there the flow of traffic at

1.20 o'clock in the morning was heavy. In my opinion that evidence is not sufficient to found a conviction for reckless driving under section 26 of the Ordinance. I would therefore allow the appeal to the extent that the conviction is altered to one under section 304A of the Penal Code. It is conceded that under the Criminal Procedure Code I have power to substitute a conviction under the Penal Code on a charge under the Road Traffic Ordinance so long as the substituted conviction is not of a more serious offence. The only matter to be dealt with then is the question of sentence.

As regards sentence, looking at the evidence on the record and taking into consideration all the circumstances including the time, the probability that the death resulted from the deceased hitting the road thereby causing the fatal injury, the fact that the two occupants of the trishaw were only slightly injured thereby indicating a probability that the speed of the appellant's car was not excessive, in the circumstances I think justice would be served if I impose a fine in this case. I therefore set aside the sentence of imprisonment and substitute a fine of \$1,000. The disqualification to remain as imposed by the learned magistrate.

*Sentence of imprisonment set aside;
fine imposed; disqualification to remain.*

Solicitors: *Braddell Bros.*

LIEW KOH TAI v. PUBLIC PROSECUTOR

[F.C. (Wylie C.J. (Borneo), Tan Ah Tah F.J. and Simpson J.) October 8, 1964]

[Jesselton — Federal Court Criminal Appeal No. 40 of 1964]

Criminal Procedure — Trial with assessors — Whether judge bound to act in accordance with opinion of assessors — Criminal Procedure Code, Sabah, 1959.

In this case the appellant was convicted of murder. One of the grounds of appeal was that the trial judge should have acted in accordance with the opinion of two of the assessors that the appellant was guilty of culpable homicide not amounting to murder.

Held: under the Criminal Procedure Code the judgment of the judge becomes the judgment of the court and he has full authority to give that judgment contrary to the opinion of the assessors. The judge is bound to make up his own mind on the facts and not be guided by the opinions of the assessors.

FEDERAL COURT.

J. Treleaven for the appellant.

Charles Ho (Deputy Public Prosecutor) for the respondent.

Wylie C.J. (Borneo) (delivering oral judgment): The appellant was convicted on 18th June, 1964 of the offence of murder. Briefly, the facts were that a housewife was found murdered with very severe wounds caused by a parang or similar

instrument. There were nine wounds according to the doctor. The wound which seems to have been the cause of death was a very severe wound across her face and both jaws. Several parts of the house had been ransacked and money and other articles had been taken away. Eventually a necklace was traced to the sister-in-law of the accused. The appellant's finger-prints had been found at the scene and he made a voluntary confession to a magistrate in which he admitted causing the wounds. As a result of that evidence there can be no doubt that the appellant was the person who inflicted the wounds. In his statement, the appellant described that he had been gambling and drinking the night before and he got home at 7 a.m. After breakfast he went to gamble again. He lost and began drinking at a club and a shop. At about 10.30 a.m. he left Beaufort and passed the house of the deceased. She invited him in and offered him a drink. He asked her to lend him some money. She refused, and as a result of her refusal he took hold of her. She obtained a chopper and attempted to strike him. He struggled with her and she released her hold of the chopper. He recovered the chopper from the floor and slashed her with it. He then went home and washed his clothing and went to sleep.

As far as the facts are concerned, the grounds of appeal were that on the balance of probabilities the trial judge should have found that by reason of intoxication at the time of killing the appellant was incapable of realising what he was doing. From a legal point of view I cannot find anything in support of this. There is no evidence as to the appellant's condition at the time except his own statement. If we accept his statement as to what he did, then it seems to follow automatically that there is no room to find that he was temporarily insane or incapable of performing a murder without realising what he was doing. He described in detail all that he did. In addition, there was all the other evidence that the house was ransacked and a necklace taken from the woman's neck. He washed out his clothes when he got home. This evidence certainly does not raise any probability or ground for suggesting that he was temporarily insane, or so drunk that he could not form the intent necessary to constitute the offence of murder.

That being the state of the evidence, the trial judge was fully justified in holding that the offence of murder had been proved beyond reasonable doubt.

The first ground of appeal is to the effect that the trial judge should have acted in accordance with the opinion of two of the three assessors that the appellant was guilty of culpable homicide not amounting to murder. There can be no doubt that under the Criminal